aspect of the matter I prefer in the words of Romer L.J. in *Moore v. R. Fox & Sons*[4] :—

"To rest my conclusion on the view that at the close of the whole evidence which the plaintiff called he had established a *prima facie* case of negligence against the defendants which they have failed by their own evidence to displace."

It only remains therefore to assess the damages to which the plaintiff is entitled. As to this aspect of the case there was no cross-examination of the plaintiff either with regard to the items in respect of which special damages were claimed or on the question of damages generally nor did counsel for the defendants make any submissions thereon.

I am left therefore with the plaintiff's unchallenged evidence with regard to the items in respect of which special damages are claimed as set out in the statement of claim but I think he tended to over-estimate their value.

Giving the best consideration I can to this question I assess the damages to which the plaintiff is, in my judgment, entitled as follows :—

1.	Special damage suffered by the plaintiff by reason of loss of his personal property ...	$2,000
2.	Special damage suffered by the estate of Ang Ah Choon deceased by reason of loss of personal property	$ 300
3.	Special damage suffered by the estate of Ng Geok Keow deceased by reason of loss of personal property	$3,000

On the evidence before me I am unable to make separate awards with regard to funeral expenses but I award a sum of $622 in respect of both estates.

With regard to loss of expectation of life I award in the case of the child the sum of $1,500 and in the case of the mother the sum of $2,500.

Finally with regard to pain and suffering the evidence of Mr. Frye was that as the result of carbon monoxide poisoning the mother would certainly be unconscious before death while the child would probably not be although he would be suffering from lassitude mental confusion and unco-ordination. In each instance death must have ensued very quickly. I am not disposed to make any award under this head with regard to the mother but in respect of the child I award $200.

There will be judgment, therefore, for the plaintiff for $10,122 and costs.

Order accordingly.

Solicitors: *Murphy, Dunbar & Chung; Leicester & Chen.*

SEE KENG WAH v. LIM TEW HONG

[O. C. J. (Chua J.) March 28, 1957]

[Singapore — Suit No. 1444 of 1955]

Negligence — Motor car accident — Negligent driving of servant or agent — Personal injuries — Proof of ownership of motor car — Prima facie evidence of employment of driver — Doctrine of res ipsa loquitur.

Where a plaintiff in an action for negligence proves that damage has been caused by the defendant's motor car the fact of the ownership of the motor car is *prima facie* evidence that the motor car, at the material time, was being driven by the owner, or by his servant or agent.

There must be reasonable evidence of negligence. But where the thing is shown to be under the management of the defendant or his servant, and the accident is such as in ordinary course of things does not happen if those who have the management use proper care it affords reasonable evidence, in the absence of explanation by the defendant that the accident arose from want of care.

Cases referred to :—

(1) *Barnard v. Sully* 47 T.L.R. 557.

(2) *V. V. V. Menon v. H. Pigeoneau* (1957) M.L.J. 85.

(3) *Barkway v. South Wales Transport* (1950) 1 All E.R. 392.

(4) *Scott v. London & St. Katherine Docks Co.* 159 E.R. 665.

CLAIM FOR DAMAGES.

Chong Thutt Pitt for the plaintiff.

H. E. Cashin for the defendant.

Chua J. : —The plaintiff, a little boy aged three at the date of the accident, by his next friend (his father), claims damages for personal injuries due to the negligent driving of the servant or agent of the defendant. It is admitted that the defendant was the owner of the car at the date of the accident.

The plaintiff on the 4th April 1955 was being taken to the sea-side by his elder sister See Yim Leng (P.W.5) together with two other sisters and a brother. They crossed half of Beach Road and stood on the road divider, which was in the middle of the road, for the traffic to pass. See Yim Leng was holding the plaintiff by his left hand. While they were standing there the car of the defendant driven by one Han Hung Juan ran into the plaintiff who fell backwards on to the road and sustained injuries.

The plaintiff did not bring evidence to prove that Han Hung Juan, the driver of the car, was the servant or agent of the defendant but said that the fact of ownership was *prima facie* evidence that the car, at the material time, was being driven by the owner or by his servant or agent and cited as his authority the case of

Barnard v. Sully[1]. In that case it was held that the mere fact of ownership of the car, in a case of negligent driving, was some evidence that the car was being driven by the owner or whoever was driving it was doing so with the permission of the owner as his servant or agent. Such evidence, of course, is not conclusive but may be rebutted by proving who was actually driving at the time. It is common ground that if Han Hung Juan was a servant or agent of the defendant at the material time then the defendant is vicariously liable for the negligence of Han Hung Juan.

The defendant gave evidence to the effect that Han Hung Juan was a friend and that he lent the car on that day to Han Hung Juan for his friend to go for a joy ride and that Han Hung Juan was not his servant or agent. The defendant called no witnesses.

The question to decide is whether the defendant has rebutted the presumption that Han Hung Juan was his servant or agent.

The defendant did not call Han Hung Juan, a very material and essential witness. The defendant said that Han Hung Juan was a seaman but in the report, Exhibit P2, Han Hung Juan described himself as a wireman. No explanation has been given as to why Han Hung Juan was not called. It was only in cross-examination that one learnt that Han Hung Juan had gone to sea. It appears that there was no intention on the part of the defendant to call Han Hung Juan.

The Court is entitled to the best evidence available before it can be called upon for a decision and if the defendant failed to call a material or essential witness and did not give any explanation why such a witness was not called then, I think, the Court is entitled to presume, in his absence, that the evidence of Han Hung Juan would not support the defendant's case (section 115 illustration (g) of the Evidence Ordinance (Cap. 4)). In other words, I do not think the defendant has discharged the onus thrown upon him.

I next turn to the question as to whether there was negligence on the part of Han Hung Juan. The plaintiff not only sought to prove an affirmative case of negligent driving against Han Hung Juan by calling the plaintiff's sister (P.W.6) but also relied on the doctrine of *res ipsa loquitur*. The defence contended that no negligence had been proved and that the doctrine of *res ipsa loquitur* did not apply.

I was very impressed by the way in which See Yim Leng (P.W.6) gave her evidence. She gave a very straight forward story of what happened that day. It was suggested by the defence that the plaintiff stepped off the road divider and was consequently knocked down. See Yim Leng was unshaken in cross-examination. As Han Hung Juan was not called to give his version of the accident I accepted the evidence of See Yim Leng and found as a fact that the plaintiff was knocked into by the car when he was standing on the road divider.

It would appear that the car must have been driven very very close to the road divider and the front mudguard or bumper of the car must have hit the plaintiff. The road was wide, there was no other vehicle near by and there was no reason for the car to be driven so close to the road divider. I am satisfied that Han Hung Juan failed to keep a proper look out and he failed to have any regard for persons who were using the road divider as a refuge. In my view Han Hung Juan was negligent.

I next consider the point whether the doctrine of *res ipsa loquitur* applies in this case. In the course of his judgment in the case of *V. V. V. Menon v. H. Pigeoneau*[2] Whyatt C.J. said :—

> "This doctrine *res ipsa loquitur* is sometimes referred to as a principle of law, but it is, in fact, no more than a rule of evidence of which the essence is, as Lord Radcliffe pointed out in **Barkway v. South Wales Transport**[3] that an event which in the ordinary course of things is more likely than not to have been caused by negligence is by itself evidence of negligence".

I think the principle to be followed is the one laid down in the case of *Scott v. The London & St. Katherine Docks Co.*[4], at 667, by the Exchequer Chamber. Erle C.J. there said :—

> "But when the thing is shewn to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendant, that the accident arose from want of care".

Here we have a case of a boy standing still on the road divider where he was taking refuge, there was no traffic to force the driver of the car to keep to the centre of the road, the road was wide, the road was dry, and an accident took place. In my opinion on the facts before me they required explanation by the driver of the car. The driver of the car has not been called to give an explanation and it follows, therefore, in my view that the defendant has failed to prove that Han Hung Juan was not negligent.

I find then that the plaintiff has proved negligence against Han Hung Juan and he is entitled to recover damages against the defendant. He has given particulars of his special damages. The first item of $16

is for transport expenses to and from the General Hospital; this was incurred by the parents of the plaintiff. I disallow this item. The second item of $48 is for the plaintiff's transport expenses to and from the General Hospital during the period that he was an outpatient. I allow this item. The third item of $100 is for nourishing food; the medical evidence was that the plaintiff did not require nourishing food. I disallow this item. The fourth and fifth items of $160 and $80 are for the wages and food of a servant employed to look after the plaintiff for two months. I do not think that a full time servant was necessary to look after the plaintiff; a little servant girl would have been sufficient for the purpose. I reduce the two items to $100. In the result I award the plaintiff $148 as special damages.

Now I come to the question of general damages. The plaintiff sustained the following injuries (1) a bruise on the right side of the face with swelling of the right eye (2) a lacerated wound on the right forearm and (3) a fracture of the right femur. He was unconscious for three days and he was in hospital for about one month and attended the General Hospital as an outpatient for a period of another month. His leg was in plaster of Paris for a period of twenty days. The plaintiff claims general damages (a) for pain and suffering and shock and (b) for general disability. The plaintiff's father said in evidence that the plaintiff after the accident became absent minded but no medical evidence was called to substantiate this. I therefore make no award on the claim for "general disability". After reviewing the medical evidence relating to the plaintiff's injuries and after careful consideration I think that the appropriate sum to be awarded for general damages is $2,000.

I therefore award the plaintiff $2,148 damages against the defendant and the taxed costs of this action.

Judgment for the plaintiff.

Solicitors: *Chong Thutt Pitt & Co.; Rodyk & Davidson.*

Re SHRINE OF HABIB NOH

[O. C. J. (Taylor J.) August 14, 1956]

[Singapore — Originating Petition No. 17 of 1952]

Charity — Endowment — Muslim and Hindu Endowments Ordinance (Cap. 271) — Trust — Object of — Surplus income — Scheme for disposal of — Cy pres doctrine.

This was a petition under the Mohammedan and Hindu Endowments Ordinance (Cap. 175 of McElwaine Edn.) for approval of a scheme for the management of certain endowments. Habib Noh, who was regarded as a saint by the water-side community near the dock area of Tanjong Pagar, died in 1880 and was buried at the top of a small hill called Mount Palmer, and an elaborate domed structure resembling a mosque, with accommodation for a resident Imam, was erected over his tomb. In the same year the site of the shrine was conveyed to trustees "as and for wakaf of Habib Noh for ever," according to the Muslim law of the Shafei sect. At some time between 1880 and 1905 a massive iron chest with a slot in the lid was placed in the shrine to collect worshippers' contributions and votive gifts in money, and a deed of 1905 assured periodical payments of such collection upon the trusts of the deeds of 1880. Substantial funds continued to accrue from the moneys placed in the chest which exceeded the emoluments of the Imam and the costs of maintaining the shrine. It became usual to distribute much of the surplus to descendants of Habib Noh, without any regard to their financial position. Disputes arose which culminated in an Order made in 1936 directing that the endowment known as the wakaf of Habib Noh be administered by the then Mohammedan and Hindu Endowments Board. The Board being in doubt as to the objects to which the funds in question were applicable applied by this Petition for approval of a scheme for the disposal of a capital of about $50,000 and of the surplus income expected to accrue in the future.

Held: (1) the primary object of the trust was the maintenance of the shrine. As there had some time ago been a suggestion by the Government Architect that owing to the peculiar nature of the site it would be advisable to reinforce the foundation, the Board should put in hand forthwith the work suggested; the Board should also consider whether some money might be well spent on improving access to a small mosque adjoining the shrine for the benefit of both or for the greater convenience of persons visiting both;

(2) the Board ought also to guard against the risk of the shrine being destroyed or damaged by fire or tempest or landslip by setting aside a reserve fund to secure the means to make good the consequences of any such misfortune and to reduce recurrent expenditure in the future; this fund which should be double the amount of the estimated cost of reconstruction of the shrine should be laid out in the purchase of a suitable holding of income-producing land or other authorised security;

(3) any surplus remaining after these two main measures had been carried out should be applied for the relief of poverty amongst the descendants of Habib Noh and the balance applied to *cy pres* in the manner of spontaneous, rather than organised charity for the benefit of needy members of the class of persons to whom the donors belonged;

(4) the Court could not properly give directions as to the disposal of future income by means of a formal scheme and could only give an advisory opinion as to how this should be applied; in so far as money was required for the maintenance of the shrine its destination was obvious but surplus income should be disposed of by outright gifts to needy members of the class described.

ORIGINATING PETITION.

W. G. Alcock (Chairman of the Muslim and Hindu Endowments Board) for the petitioner.

M. J. Namazie and *Ahmad bin Mohamed Ibrahim* for the Muslim Advisory Board and the descendants of Habib Noh.

The written judgment of Taylor J. below was delivered on December 11, 1956 by Whitton J. who made a further order that the costs of the Board should be paid out of the Fund.

Taylor J. : — This is a petition under the Mohammedan and Hindu Endowments Ordinance for approval of a scheme for the management of certain endowments.